

Claim 34 (twice amended):

CS The method of claim 33 wherein said composition optionally further comprises [the osteogenic component is selected from:

- (i) demineralized bone matrix (DBM);
- (ii) bioactive glass, [ceramic, BIOGLASS®, which is SiO₂, Na₂O, CaO, P₂O₅ glass], bioactive ceramic, calcium phosphate ceramic, hydroxyapatite, hydroxyapatite carbonate, coralline hydroxyapatite, calcined bone, tricalcium phosphate or mixtures thereof.

Remarks

Claims 1-37 are pending in the subject application. All claims stand rejected. Claims 1 and 33 are amended above for further clarification purposes. Claims 10 and 24 are amended herein to remove reference to the trademark BIOGLASS®, in accord with the Examiner's suggestion. Claim 27 is amended to remove "or otherwise formed" as redundant in view of the other listed techniques of formation. Accordingly, upon entry of this Amendment, claims 1-37 as amended remain for consideration before the Examiner.

Claims 6, 10, 24, 27, and 34 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Applicants assert that the amendments to the claims above obviate all grounds for this rejection. Reconsideration is requested.

Claims 1-37 are rejected under 35 U.S.C. § 103(a) as obvious over Scheicher. The office action alleges that it would have been obvious to use the teachings of Scheicher to produce a gelatin containing composition for repairing bone defects that is capable of forming a gel at body temperature. The Examiner concedes that Scheicher may be silent on the concentration of gelatin. However, the Office Action does not take into account the additional significant and patentability defining distinctions between the claims as herein amended and that which is disclosed or suggested by Scheicher.

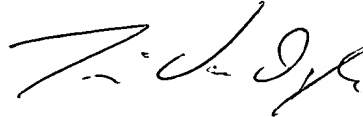
Scheicher discloses a composition optionally comprising gelatin and/or at least one polysaccharide. However, in terms of disclosure of a composition comprising gelatin as a carrier for substantially bioabsorbable osteogenic components, Scheicher is limited to its teaching at column 3, lines 45 to 68, wherein various inorganic elements selected from sodium, lithium, carbon, magnesium, boron, fluorine, silicon, phosphorous, calcium, potassium, and/or yttrium ions and/or ions of the rare earths. In regard to an organic substance included in the composition, mention is made of using "denatured bone meal" (see column 4, lines 19-41). As can be seen from the manner in which the bone meal is prepared, (drying for 8 hours in 100 degrees centigrade, soaking in 20% hydrogen peroxide for 24 hours followed by boiling in hydrogen peroxide, and then sterilizing the bone meal in an autoclave), it is quite clear that any protein-based osteogenic components are completely denatured. In fact, Scheicher treats the bone meal extremely harshly, and does not in any respect teach or suggest that the denatured bone meal plays any role in inducing new bone formation. It is treated as a passive filler. This is quite distinct from claim 1, herein, as amended, wherein it is clear that demineralized bone matrix (DBM), which contains bone growth factors (see the instant application throughout, where the osteogenic activities of this material are discussed), or protein-based growth factors such as bone morphogenetic protein (BMP), TGF-beta, PDGF, or mixtures thereof are intentionally included in the composition in order to induce bone formation.

In light of the foregoing comments and the amendments to the claims herein which clearly distinguish over the teachings of Scheicher, it is apparent that the cited reference neither teaches nor suggests all of the limitations of the claimed invention, and thus fails to establish a *prima facie* case of obviousness. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

From the foregoing remarks and claim amendments, it is urged that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Examiner is invited to call the undersigned if clarification is needed on any aspect of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



Timothy H. Van Dyke
Patent Attorney
Registration No. 43,218
Bencen & Van Dyke, P.A.
Address: 1630 Hillcrest Street
Orlando, FL 32802
Phone No.: 407-228-0328